

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBERTA E. SONNINO, M.D.,

Plaintiff,

v.

**UNIVERSITY OF KANSAS HOSPITAL
AUTHORITY, et al.,**

Defendants.

CIVIL ACTION

No. 02-2576-KHV

MEMORANDUM AND ORDER

This matter is before the Court on the Amended Motion To Dismiss (Doc. #29) which the University of Kansas filed January 7, 2003 and Defendants' Amended Motion To Incorporate Defendant University of Kansas' Amended Motion To Dismiss And Memorandum In Support (Doc. #31) which the University of Kansas Hospital Authority, the Kansas University Surgery Association, H. William Barkman, Jr., M.D., Laurence Y. Cheung, M.D., Irene M. Cumming, Robert Page-Adams, and Kurt P. Schropp, M.D. filed January 15, 2003. For reasons stated below, the Court overrules both motions.

Analysis

Roberta E. Sonnino, M.D. brings suit against the University of Kansas Hospital Authority ("KUHA"), the University of Kansas ("KU"), the Kansas University Surgery Association ("KUSA"), H. William Barkman, Jr., M.D., Laurence Y. Cheung, M.D., Irene M. Cumming, Robert Page-Adams, and Kurt P. Schropp, M.D. Invoking 42 U.S.C. §§ 1983 and 1985(3), plaintiff claims that Barkman, Cheung, Cumming, Page-Adams, and Schropp conspired to violate her rights under the First and Fourteenth

Amendments to the United States Constitution. Plaintiff also alleges that KUHA, KU, KUSA and Dr. Cheung violated her rights under the Equal Pay Act (“EPA”), 29 U.S.C. §§ 206(d) and 215(a)(3).

KU asks the Court to dismiss plaintiff’s amended complaint because it does not comply with Rule 8, Fed. R. Civ. P. The remaining defendants incorporate KU’s arguments and ask the Court to dismiss plaintiff’s amended complaint without prejudice. Plaintiff argues that her amended complaint complies with Rule 8 and even gives more notice than is required. In addition, she argues that her amended complaint is coherent, intelligible and unambiguous, and that each allegation directly bears on one or more of her claims and is relevant to both liability and damages.

Rule 8 provides that a complaint “shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The purpose of Rule 8 is to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Miller v. Pfizer, Inc., 1999 WL 1063046, at *1 (D. Kan. Nov. 10, 1999) (quoting Leatherman v. Tarrant County Narcotics Intelligence & Coord. Unit, 507 U.S. 163, 168 (1993)). The Court has the discretion to dismiss a complaint without prejudice for failure to comply with Rule 8(a)(2). Double v. United States, 149 F.3d 1190, 1998 WL 327747 (10th Cir. 1998); Atkins v. Northwest Airlines, Inc., 967 F.2d 1197, 1203 (8th Cir. 1992).

Defendants argue that plaintiff’s 32-page complaint contains “wholly superfluous factual contentions” and that they should not be required to respond to the unnecessary and extraneous allegations. Memorandum In Support Of Defendant University Of Kansas’ Amended Motion To Dismiss (Doc. #30) filed January 7, 2003 at 2-3. Defendants rely on Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988), for the proposition that “unnecessary prolixity in a pleading places an unjustified burden on the court and

the party who must respond to it because they are forced to select the relevant material from a mass of verbiage.”

From a review of the case law in the Tenth Circuit and the District of Kansas, it is apparent that the courts correctly focus on the quality and not exclusively on the tonnage of the complaint, *i.e.*, whether the complaint provides adequate notice of plaintiff’s claims. Miller, 1999 WL 1063046, at *2; *see Jenkins v. Colo. Dep’t of Soc. Servs. Div. of Vocational Rehab.*, 188 F.3d 518, 1999 WL 542572 at *1 (10th Cir. 1999) (vague and conclusory allegations did not provide precise basis for claims); Williams v. City of Colo. Springs, 176 F.3d 490, 1999 WL 235930 at *1 (10th Cir. 1999) (complaint was vague and prolix); Bishop v. Romer, 172 F.3d 62, 1999 WL 46688 at *1 (10th Cir. 1999) (36-page complaint contained rambling, disjointed factual allegations, seemingly unrelated conclusory assertions of constitutional violations, and exhaustive recital of statutes and administrative rules, which shed no light on exact nature of plaintiff’s claims); Double, 1998 WL 327747 at *1 (striking voluminous and confusing complaints which placed too great a burden on defendant and court to identify claims); Carpenter v. Williams, 86 F.3d 1015 (10th Cir. 1996) (complaint was “incomprehensible”); Gibson v. City of Cripple Creek, 48 F.3d 1231, 1995 WL 94483 at *1 (10th Cir. 1995) (rambling and vague 37-page complaint); Ferris v. Dep’t of Air Force, 1998 WL 164805 at *1 (D. Kan. Mar. 5, 1998); Moll v. Carter, 179 F.R.D. 609, 610 (D. Kan. 1998).

“Dismissal . . . is usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Miller, 1999 WL 1063046, at *2 (quotations and citations omitted). In this case, plaintiff’s complaint does not rise to this standard. It provides adequate notice of her claims and is coherent, intelligible and generally unambiguous. More importantly, it is not unduly lengthy and defendants will not suffer too great a burden in finding the

relevant material and responding to it. See Salahuddin, 861 F.2d at 41. The Court therefore declines to dismiss plaintiff's complaint under Rule 8(a).

IT IS THEREFORE ORDERED that the University of Kansas' Amended Motion To Dismiss (Doc. #29) filed January 7, 2003 be and hereby is **OVERRULED**.

IT IS FURTHER ORDERED that Defendants' Amended Motion To Incorporate Defendant University of Kansas' Amended Motion To Dismiss And Memorandum In Support (Doc. #31) filed January 15, 2003 be and hereby is **OVERRULED**.

Dated this 24th day of March, 2003 at Kansas City, Kansas.

s/Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge